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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CECILIA LINARES, On Behalf of Herself
and All Other Similarly Situated California
Residents,

Plaintiff,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.: 3:11-cv-02547-MMA-RBB

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
2. VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT, Civil Code
§1750 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiff Cecilia Linares (“Plaintiff”), by and through her attorneys, brings this
 2 action on behalf of herself and all others similarly situated against Defendant Costco
 3 Wholesale Inc. (“Costco” or “Defendant”), and alleges as follows:

4 **NATURE OF ACTION**

5 1. Defendant markets, sells and distributes the Kirkland Signature^{TM1}
 6 Glucosamine line of joint health dietary supplements.² Through an extensive,
 7 widespread, comprehensive and uniform nationwide marketing campaign, Defendant
 8 claims that its Kirkland Glucosamine products help improve joint mobility, rebuild
 9 cartilage and improve joint function for all joints in the human body, for adults of all ages
 10 and for all manner and stages of joint related ailments. For example, on each and every
 11 Kirkland Glucosamine Chondroitin product label and/or package, Defendant prominently
 12 states that Kirkland Glucosamine is “Clinically Proven Effective” for “optimum
 13 mobility” and “as a building block for healthy cartilage” and that “two tablets per day
 14 deliver” these benefits, as well as “nourishes JOINT and CONNECTIVE TISSUE” and
 15 “supports JOINT CUSHIONING” (hereafter referred to as the “joint renewal, mobility
 16 and rejuvenation” representations). On each and every Kirkland Glucosamine and MSM
 17 product label and/or package, Defendant makes similar joint renewal, mobility and
 18 rejuvenation claims and also promises that “noticeable improvement in flexibility and
 19 range of motion should be expected after taking this supplement as directed on a
 20 consistent basis.” However, the Kirkland Glucosamine products do not benefit or
 21 promote joint renewal, mobility and rejuvenation. Clinical cause and effect studies have
 22 found no causative link between the ingredients in the Kirkland Glucosamine products

23
 24 ¹ Kirkland SignatureTM is Costco’s store brand, also known as its “own-brand”, “house
 25 brand”, or “private label”. It is available exclusively at Costco’s website and Costco
 26 warehouses and is trademarked by the company. Kirkland SignatureTM is one of the most
 27 successful brands in the country.

28 ²The Kirkland SignatureTM Glucosamine line of joint health dietary supplements include:
 (1) Kirkland SignatureTM Extra Strength Glucosamine Chondroitin Sulfate (“Kirkland
 Glucosamine Chondroitin”); and (2) Kirkland SignatureTM Extra Strength Glucosamine
 HCL and MSM (“Kirkland Glucosamine and MSM”) (collectively, “Kirkland
 Glucosamine” or the “Products”).

1 and joint renewal, mobility and rejuvenation. Defendant also does not have competent
2 and reliable scientific evidence to support its representations. Defendant's representations
3 are false, misleading, and reasonably likely to deceive the public.

4 2. Despite the deceptive nature of Defendant's representations, Defendant
5 conveyed and continues to convey its deceptive joint renewal, mobility and rejuvenation
6 representations through a variety of media, including in its print advertisements, as well
7 as on its Product packages and labeling, website and online promotional materials. The
8 only reason a consumer would purchase the Kirkland Glucosamine products is to obtain
9 the advertised joint health benefits, which Kirkland Glucosamine does not provide.

10 3. Defendant's marketing and advertising campaign is designed to cause
11 consumers to buy Kirkland Glucosamine. Defendant's deceptive marketing and
12 advertising campaign has succeeded. Estimated sales of joint dietary supplements
13 including Kirkland Glucosamine approached \$820 million in 2006.³

14 4. Plaintiff brings this action on behalf of herself and other similarly situated
15 California consumers who have purchased the Products to halt the dissemination of this
16 false and misleading advertising message, correct the false and misleading perception it
17 has created in the minds of consumers, and obtain redress for those who have purchased
18 the Kirkland Glucosamine products. Plaintiff alleges violations of the Consumers Legal
19 Remedies Act, the Unfair Competition Law, and Breach of Express Warranty created by
20 Defendant's advertising, including false labeling.

21 **JURISDICTION AND VENUE**

22 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
24 \$5,000,000 and is a class action in which there are in excess of 100 class members and
25 the members of the Class are citizens of a state different from Defendant.

26
27 ³ 2007 Nutrition Industry Overview, Nutrition Business J., *available at*
28 <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last
visited Oct. 3, 2011).

FACTUAL ALLEGATIONS

The Kirkland Glucosamine Products

10. Since 2001, Costco has distributed, marketed, and sold the Kirkland Signature™ line of joint dietary supplements. These products include: (1) Kirkland Signature™ Extra Strength Glucosamine/Chondroitin Sulfate; and (2) Kirkland Signature™ Extra Strength Glucosamine HCL and MSM.

11. The Kirkland Glucosamine products are sold online and in Costco stores statewide. The Kirkland Glucosamine and MSM product is available in 375 count bottles, retailing for approximately \$18. The Kirkland Glucosamine Chondroitin product is available in 220 count bottles, retailing for approximately \$25. The following are screen shots of the Kirkland Glucosamine products:



12. Since the Products' launch, Costco has consistently conveyed the message to consumers throughout California that the Kirkland Glucosamine products, with their "extra strength" formulas are clinically proven to deliver "optimum mobility" and will protect and build cartilage. Defendant's renewal, mobility and rejuvenation representations are false, misleading and deceptive.

13. Defendant represents that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredient in both Kirkland Glucosamine products is glucosamine hydrochloride. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. The

1 Products' labeling and packaging states the benefits associated with taking glucosamine
2 hydrochloride: "Glucosamine is a basic building block for cartilage, synovial fluid and
3 other connective tissues, which are needed for healthy structure and function of joints."
4 There is no competent and reliable scientific evidence that taking glucosamine—let alone
5 through oral administration—results in the body metabolizing it into something that
6 builds cartilage or improves joint structure or function. In fact, clinical cause and effect
7 studies have found no causative link between glucosamine hydrochloride
8 supplementation and joint renewal, mobility or rejuvenation.

9 14. The chondroitin sulfate in Kirkland Glucosamine Chondroitin, is a complex
10 carbohydrate found in the body's connective tissues. On the Product's labeling and
11 packaging, Defendant represents that chondroitin sulfate "protects existing cartilage and
12 serves as a building block for healthy new cartilage." There is no competent and reliable
13 scientific evidence that taking chondroitin—let alone through oral
14 administration—results in the body metabolizing it into something that assists in building
15 joint cartilage. Clinical cause and effect studies have found no causative link between
16 chondroitin supplementation and joint renewal, mobility or rejuvenation.

17 15. The Methylsulfonylmethane ("MSM") found in Kirkland Glucosamine and
18 MSM products is an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee,
19 and milk. On the Product's labeling and packaging, Defendant claims that MSM "is a
20 necessary component that works in conjunction with Glucosamine to provide the building
21 blocks of collagen, an important component of healthy joints and connective tissue.
22 Clinical research shows MSM increases glucosamine's effectiveness." There is no
23 competent and reliable scientific evidence that taking MSM—let alone through oral
24 administration—results in the body metabolizing it into something that builds cartilage or
25 improves joint structure or function, or makes glucosamine work more effectively.
26 Clinical cause and effect studies have found no causative link between MSM
27 supplementation and joint renewal, mobility or rejuvenation.
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1 16. The Kirkland Glucosamine Chondroitin bottle references one study
2 purportedly supporting Defendant's "Clinically Proven Effective" representation. Other
3 than referencing the study sponsor, no other identifying information is included. The
4 referenced NIH study is not competent and reliable scientific support for Defendant's
5 representations. The NIH sponsored study did not examine, let alone find, that
6 glucosamine and chondroitin rebuild cartilage, nourish joint and connective tissue or
7 support joint cushioning. Defendant's citation to this study as support for its joint
8 renewal, mobility and rejuvenation representations constitutes further deceptive and
9 misleading conduct, in as much as the study is not competent and reliable evidence of
10 efficacy.

11 17. In fact, numerous clinical cause and effect studies have found no causative
12 link between any of the primary active ingredients in the Kirkland Glucosamine products
13 alone, or in combination, and joint renewal, mobility and rejuvenation. Nevertheless,
14 Defendant without any scientifically valid confirmation that Kirkland Glucosamine is an
15 effective joint treatment—let alone an effective treatment for *all* joints in the human
16 body, for adults of *all* ages and for *all* manner and stages of joint related ailments —
17 prominently claims on the Products' packaging and labeling that Kirkland Glucosamine,
18 with its "extra strength" formula, will "deliver" "optimum joint mobility", rebuild
19 cartilage and improve joint function. Front, back and side shots of the two Kirkland
20 Glucosamine product labels appear as follows:

FRONT



LEFT SIDE



FRONT



LEFT SIDE



18. Defendant did not and does not have competent and reliable scientific evidence that any of the ingredients in its Kirkland Glucosamine products taken alone or in combination benefit, improve or promote joint renewal, mobility or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Kirkland Glucosamine products and the prevention or improvement of joint

1 degeneration or other joint ailments. Defendant's renewal and rejuvenation
2 representations are false and misleading and reasonably likely to deceive the average
3 consumer.

4 ***The impact of Defendant's wrongful conduct***

5 19. Despite the lack of competent and reliable scientific evidence and
6 numerous clinical studies that have found no causative link between the ingredients in the
7 Kirkland Glucosamine products and joint renewal, mobility or rejuvenation, Defendant
8 continues to unequivocally claim that its Kirkland Glucosamine products are an effective
9 treatment for improving joint renewal, mobility and rejuvenation in all adults.

10 20. As the distributor of the Kirkland Glucosamine products, Defendant
11 possesses specialized knowledge regarding the content and effects of the ingredients
12 contained in its Kirkland Glucosamine products and is in a superior position to learn of
13 the effects—and has learned of the effects—its Products have on consumers.

14 21. Specifically, Defendant affirmatively misrepresented that the Kirkland
15 Glucosamine products, with their "extra strength formula", are clinically proven to
16 provide "Optimum JOINT HEALTH & MOBILITY", "Help[] Build CARTILAGE",
17 "Nourish[] JOINT and CONNECTIVE tissue" and "Support[] JOINT CUSHIONING".
18 Having made these affirmative misrepresentations, Defendant failed to disclose that well-
19 conducted, clinical cause-and-effect studies have found no causative relationship between
20 the product ingredients and the prevention or improvement of joint degeneration or other
21 related ailments and Defendant has no competent and reliable scientific evidence that its
22 Kirkland Glucosamine products are effective in helping provide joint renewal, mobility
23 or rejuvenation as represented.

24 22. Notwithstanding these deceptive representations and material omissions,
25 Defendant conveyed and continues to convey one uniform message: Kirkland
26 Glucosamine, with its "extra strength formula", is clinically proven to provide "Optimum
27 JOINT HEALTH & MOBILITY", "Help[] Build CARTILAGE", "Nourish[] JOINT and
28

1 CONNECTIVE tissue” and “Support[] JOINT CUSHIONING” for all joints in the
2 human body, for adults of all ages and for all manner and stages of joint related ailments..

3 23. Plaintiff and Class members have been and will continue to be deceived or
4 misled by Defendant’s deceptive joint renewal, mobility and rejuvenation
5 representations. Plaintiff purchased and consumed the Product during the Class period
6 and in doing so, read and considered the Product label and based her decision to buy the
7 Product on the joint renewal, mobility and rejuvenation representations. Defendant’s
8 deceptive representations and omissions were a material factor in influencing Plaintiff’s
9 decision to purchase and consume the Product. Plaintiff would not have purchased the
10 Product had she known that Defendant’s representations were false and misleading, that
11 Defendant did not possess competent and reliable scientific evidence to support its joint
12 renewal, mobility and rejuvenation representations, and that clinical cause-and-effect
13 studies have found no causative link between the ingredients in Kirkland Glucosamine
14 and joint renewal, mobility or rejuvenation.

15 24. As a result, Plaintiff and the Class members have been damaged in their
16 purchases of these Products and have been deceived into purchasing Products that they
17 believed, based on Defendant’s representations, were proven to be effective in improving
18 joint mobility, rebuilding cartilage and improving joint function when, in fact, they are
19 not.

20 25. Defendant, by contrast, reaped enormous profits from its false marketing
21 and sale of these Products.

22 **CLASS DEFINITION AND ALLEGATIONS**

23 26. Plaintiff brings this action on behalf of herself and all other similarly
24 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
25 Rules of Civil Procedure and seeks certification of the following Class:

26 All California residents who, within the applicable statute of
27 limitations, purchased Kirkland Signature[™] Extra Strength[™]
28 Glucosamine Chondroitin Sulfate and/or Kirkland Signature[™]

1 Extra Strength Glucosamine with MSM.

2 Excluded from the Class are Defendant, its parents,
3 subsidiaries, affiliates, officers and directors, and those who
4 purchased the Kirkland Glucosamine products for the purpose
of resale.

5 27. Members of the Class are so numerous and geographically dispersed that
6 joinder of all Class members is impracticable. Plaintiff is informed and believes, and on
7 that basis alleges, that the proposed Class contains many thousands of members. The
8 precise number of Class members is unknown to Plaintiff.

9 28. Common questions of law and fact exist as to all members of the Class and
10 predominate over questions affecting only individual Class members. The common legal
11 and factual questions include, but are not limited to, the following:

- 12 • Whether the claims discussed herein that Defendant made about the
13 Products were or are misleading, or reasonably likely to deceive;
- 14 • Whether Defendant's alleged conduct violates public policy;
- 15 • Whether the alleged conduct constitutes violations of the laws
16 asserted herein;
- 17 • Whether Defendant engaged in false and misleading advertising;
- 18 • Whether Plaintiff and Class members have sustained monetary loss
19 and the proper measure of that loss;
- 20 • Whether Plaintiff and Class members are entitled to restitution,
21 disgorgement of Defendant's profits, declaratory and/or injunctive relief; and
- 22 • Whether Plaintiff and Class members are entitled to an award of
23 compensatory and/or punitive damages.

24 29. Plaintiff's claims are typical of the claims of the members of the Class
25 because, *inter alia*, all Class members were injured through the uniform misconduct
26 described above, were subject to Defendant's deceptive joint renewal, mobility and
27 rejuvenation representations accompanying each and every bottle of the Kirkland
28

1 Glucosamine products which include the same primary active ingredient – glucosamine
2 hydrochloride. Plaintiff is advancing the same claims and legal theories on behalf of
3 herself and all members of the Class.

4 30. Plaintiff will fairly and adequately represent and protect the interests of the
5 members of the Class. Plaintiff has retained counsel competent and experienced in both
6 consumer protection and class litigation.

7 31. A class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy. The expense and burden of individual
9 litigation would make it impracticable or impossible for proposed Class members to
10 prosecute their claims individually. It would thus be virtually impossible for the Class,
11 on an individual basis, to obtain effective redress for the wrongs done to them.
12 Furthermore, even if Class members could afford such individualized litigation, the court
13 system could not. Individualized litigation would create the danger of inconsistent or
14 contradictory judgments arising from the same set of facts. Individualized litigation
15 would also increase the delay and expense to all parties and the court system from the
16 issues raised by this action. By contrast, the class action device provides the benefits of
17 adjudication of these issues in a single proceeding, economies of scale, and
18 comprehensive supervision by a single court, and presents no unusual management
19 difficulties under the circumstances here.

20 32. In the alternative, the Class also may be certified because Defendant has
21 acted or refused to act on grounds generally applicable to the Class thereby making
22 appropriate final declaratory and/or injunctive relief with respect to the members of the
23 Class as a whole.

24 33. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
25 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
26 and prevent Defendant from engaging in the acts described, and requiring Defendant to
27 provide full restitution to Plaintiff and Class members.
28

1 because, as alleged above, *inter alia*, Defendant engaged in false advertising,
2 misrepresented and omitted material facts regarding its Kirkland Glucosamine labels and
3 packaging, and thereby offended an established public policy, and engaged in immoral,
4 unethetical, oppressive, and unscrupulous activities that are substantially injurious to
5 consumers.

6 41. As stated in this Complaint, Plaintiff alleges violations of consumer
7 protection, unfair competition and truth in advertising laws, resulting in harm to
8 consumers. Defendant's acts and omissions also violate and offend the public policy
9 against engaging in false and misleading advertising, unfair competition and deceptive
10 conduct towards consumers. This conduct constitutes violations of the unfair prong of
11 Business & Professions Code §17200, *et seq.*

12 42. There were reasonably available alternatives to further Defendant's
13 legitimate business interests, other than the conduct described herein.

14 43. Business & Professions Code §17200, *et seq.*, also prohibits any
15 "fraudulent business act or practice."

16 44. Defendant's actions, claims, nondisclosures and misleading statements, as
17 more fully set forth above, were also false, misleading and/or likely to deceive the
18 consuming public within the meaning of Business & Professions Code §17200, *et seq.*

19 45. Plaintiff and other members of the Class have in fact been deceived as a
20 result of their reliance on Defendant's material representations and omissions, which are
21 described above. This reliance has caused harm to Plaintiff and other members of the
22 Class who each purchased Defendant's Kirkland Glucosamine products. Plaintiff and the
23 other Class members have suffered injury in fact and lost money as a result of these
24 unlawful, unfair, and fraudulent practices.

25 46. As a result of its deception, Defendant has been able to reap unjust revenue
26 and profit.

27 47. Unless restrained and enjoined, Defendant will continue to engage in the
28

1 above-described conduct. Accordingly, injunctive relief is appropriate.

2 48. Plaintiff, on behalf of herself and all others similarly situated, and the
3 general public, seeks restitution and disgorgement of all money obtained from Plaintiff
4 and the members of the Class collected as a result of unfair competition, an injunction
5 prohibiting Defendant from continuing such practices, corrective advertising and all other
6 relief this Court deems appropriate, consistent with Business & Professions Code
7 §17203.

8 **COUNT II**
Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.*

9 49. Plaintiff re-alleges and incorporates by reference the allegations contained
10 in the paragraphs above as if fully set forth herein.

11 50. Plaintiff Cecilia Linares brings this claim individually and on behalf of the
12 Class.

13 51. This cause of action is brought under the Consumers Legal Remedies Act,
14 California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a consumer as defined by
15 California Civil Code §1761(d). Defendant’s Kirkland Glucosamine products are goods
16 within the meaning of the Act.

17 52. Defendant violated and continues to violate the Act by engaging in the
18 following practices proscribed by California Civil Code §1770(a) in transactions with
19 Plaintiff and the Class which were intended to result in, and did result in, the sale of
20 Defendant’s Kirkland Glucosamine products:

21 (5) Representing that [the Kirkland Glucosamine products have] . . .
22 characteristics, . . . uses [or] benefits . . . which [they] do not have.

23 * * *

24 (7) Representing that [the Kirkland Glucosamine products are] of a particular
25 standard, quality or grade, . . . if [they are] of another.

26 * * *

27 (9) Advertising goods . . . with the intent not to sell them as advertised.
28

* * *

(16) Representing that [the Kirkland Glucosamine products have] been supplied in accordance with a previous representation when [they have] not.

53. Defendant violated the Act by representing and failing to disclose material facts on the Kirkland Glucosamine product labels and packaging, as described above, when it knew, or should have known, that the representations were unsubstantiated, were contrary to several clinical cause and effect studies finding the ingredients in all Kirkland Glucosamine products to be inefficacious, were false and misleading and that the omissions were of material facts they were obligated to disclose.

54. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

55. Pursuant to §1782 of the Act, by letter dated November 2, 2011, Plaintiff notified Defendant in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act.

56. Defendant failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff further seeks claims for actual, punitive and statutory damages, as appropriate.

57. Defendant's conduct is malicious, fraudulent and wanton.

COUNT III
Breach of Express Warranty

58. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

59. Plaintiff Cecilia Linares brings this claim individually and on behalf of the Class.

60. Defendant expressly warranted on each and every box of Kirkland

1 Glucosamine that the Products help to provide “Optimum JOINT HEALTH &
2 MOBILITY”, “Help[] Build CARTILAGE”, “Nourish[] JOINT and CONNECTIVE
3 tissue” and “Support[] JOINT CUSHIONING”. These joint renewal, mobility and
4 rejuvenation statements made by Defendant are affirmations of fact that became part of
5 the basis of the bargain and created an express warranty that the goods would conform to
6 the stated promises. Plaintiff read and placed importance on Defendant’s joint renewal,
7 mobility and rejuvenation representations.

8 61. All conditions precedent to Defendant’s liability under this contract have
9 been performed by Plaintiff and the Class.

10 62. Defendant breached the terms of this contract, including the express
11 warranties, with Plaintiff and the Class by not providing Products that could provide the
12 benefits described above which was the only reason Plaintiff and Class members
13 purchased the Kirkland Glucosamine products.

14 63. As a result of Defendant’s breach of its warranty, Plaintiff and Class
15 members have been damaged in the amount of the purchase price of the Kirkland
16 Glucosamine products they purchased.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff prays for a judgment:

- 19 A. Certifying the class as requested herein;
20 B. Awarding Plaintiff and the proposed Class members damages;
21 C. Awarding restitution and disgorgement of Defendant’s revenues to Plaintiff
22 and the proposed Class members;
23 D. Awarding declaratory and injunctive relief as permitted by law or equity,
24 including enjoining Defendant from continuing the unlawful practices as set
25 forth herein, and directing Defendant to identify, with court supervision,
26 victims of its conduct and pay them restitution and disgorgement of all
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monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful;

- E. Ordering Defendant to engage in a corrective advertising campaign;
- F. Awarding attorneys' fees and costs; and
- G. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: November 29, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record denoted on the Court's Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 29, 2011.

By: s/ Patricia N. Syverson

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